


MEMORANDUM

April 27, 2012

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Introduction:** Expedited Bill 18-12, Personnel -- Disability Retirement -- Eligibility and Benefits - Amendments

Expedited Bill 18-12, Personnel -- Disability Retirement -- Eligibility and Benefits - Amendments, sponsored by the Council President at the request of the County Executive, is scheduled to be introduced on May 1, 2012. A public hearing is tentatively scheduled for May 8 at 1:30 p.m.

Bill 18-12 would:

- Create a catastrophic incapacity service-connected disability retirement benefit for members of Retirement Group F (Police) and employees represented by MCGEO;
- Modify the amount of the benefit for a partial and total incapacity service-connected disability retirement for members of Retirement Group F (Police) and employees represented by MCGEO; and
- Reduce the restrictions on receiving a service-connected disability retirement benefit for members of Retirement Group F (Police) and employees represented by MCGEO who are convicted of a crime.

Background

Bill 45-10, Personnel - Disability Retirement- Eligibility - Total and Partial Incapacity, enacted on June 28, 2011, amended the disability retirement laws to create the same two-tier system for police and general government employees that already existed for fire and rescue employees. Under Bill 45-10, a service-connected partial incapacity disability retirement is at least 52½% of final pay and a service-connected total incapacity disability retirement is at least 70% of final pay for all employees. Bill 45-10 takes effect for a disability that occurs on or after July 1, 2012.

However, Bill 45-10 also contained an uncodified section that permitted either the FOP or MCGEO to bargain with the Executive over disability retirement as a separate issue this year. The parties were permitted to submit an impasse in bargaining to arbitration as a separate issue on a final offer basis this year only.¹ The FOP and the Executive negotiated this issue, but were

¹ Disability retirement remains a subject for bargaining in future years as part of a collective bargaining agreement.

unable to reach an agreement and they submitted the impasse to an arbitrator for resolution. A copy of the arbitrator's decision is at ©14-27.

The arbitrator resolved the following issues by selecting the FOP's final offer.

1. The FOP and the Executive *agreed* on a 3-tier system before arbitration: 60% of final pay for partial, 66⅔% for total incapacity, and 90% for catastrophic incapacity. The parties did not agree on the definition of catastrophic incapacity or if the pension would be integrated with social security.
2. The Executive's final offer would reduce the amount of the pension when the retiree reaches normal social security retirement age (integrate with social security). Current disability retirement pensions do not integrate, but normal County retirement pensions do integrate. The FOP final offer did not integrate with social security benefits.
3. The Executive's final offer would prohibit a service-connected disability retirement award to an employee who is convicted of a significant criminal act. The FOP final offer would stop a disability retirement pension benefit only while the employee is incarcerated. Bill 45-10 prohibits a disability retirement award to a person who commits an offense that would justify termination for misconduct.

Although MCGEO did not participate as a party in the arbitration, the County Executive and MCGEO agreed in advance that the arbitrator's decision would include employees represented by MCGEO. See ©28. Therefore, Bill 18-12 includes employees represented by the FOP and employees represented by MCGEO.

As required by the uncodified section of Bill 45-10, the Executive transmitted Bill 18-12 to the Council on April 23 to implement the arbitrator's decision. Since this arbitration was outside of the normal collective bargaining process required by the County collective bargaining laws, the Council does not need to indicate its intent to reject or approve this legislation by May 15. Bill 18-12 can be handled by the Council as any other legislation. The Council can enact it, reject it, amend it, or not vote on it. Bill 18-12, if enacted, would amend the provisions of Bill 45-10 enacted last July. If Bill 18-12 is not enacted, the provisions of Bill 45-10 would take effect on July 1, 2012.

Fiscal Impact

The County's actuary estimated that Bill 18-12, if enacted, would raise the County's required annual pension contribution by at least \$832,000 in FY13 and each year after. See the OMB fiscal impact statement at ©29-51. The Executive did not include funding for this additional cost in his FY13 Recommended Budget or in his April 26 FY13 Budget Amendments.

This packet contains:

Expedited Bill 18-12
Legislative Request Report
Transmittal Memo from County Executive
Arbitration Decision
Memo from Executive concerning MCGEO
Fiscal Impact Statement

Circle #

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Expedited Bill No. 18-12
Concerning: Personnel - Disability
Retirement – Eligibility and Benefits–
Amendments
Revised: April 27, 2012 Draft No. 3
Introduced: May 1, 2012
Expires: November 1, 2013
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EXPEDITED ACT to:

- (1) create a catastrophic incapacity service-connected disability retirement benefit for certain employees;
- (2) modify the amount of the benefit for a partial and total incapacity service-connected disability retirement for certain employees;
- (3) reduce the restrictions on receiving a service-connected disability retirement benefit for certain employees who are convicted of a crime; and
- (4) generally amend County law regarding disability retirement.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-43

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec 1. Section 33-43 is amended as follows:

33-43. Disability retirement.

* * *

(b) *Definitions.* In this Section, the following words and phrases have the following meanings:

* * *

Catastrophic Incapacity means a member's inability to engage in any substantial gainful activity because of a permanent loss or loss of use of:

- (1) both arms;
- (2) both eyes;
- (3) both feet;
- (4) both hands;
- (5) both legs;
- (6) functional deafness; or
- (7) a combination of any two of the following body parts:
 - (A) arm;
 - (B) eye;
 - (C) foot;
 - (D) hand; or
 - (E) leg.

* * *

Correctional facility means a jail, prison, or other penal institution under the control and jurisdiction of the agency in charge of the penal system or in which convicted criminals can be incarcerated.

* * *

Felony means an offense that is classified as a felony under applicable law or, in a jurisdiction which does not classify any crime as a felony, is

an offense punishable by death or by imprisonment for a term exceeding one year.

* * *

Vocational rehabilitation program means a court-approved program that a prisoner is actively and satisfactorily participating in and is expected to result in the prisoner being able to do substantial gainful activity upon release and within a reasonable time.

* * *

(f) *Service-connected disability retirement.*

(1) A member may be retired on a service-connected disability retirement if:

(A) the member is catastrophically, totally, or partially incapacitated as the natural and proximate result of an accident occurring, or an occupational disease incurred or condition aggravated, while in the actual performance of duty;

* * *

(E) the member, except a member of Group F, E or H, has not committed an offense that would justify termination for misconduct. A member of Group F, E, or H must not be paid a monthly benefit for any month on or after July 1, 2012 if the member is confined in a correctional facility for conviction of a felony during any part of that month unless the member is participating in a vocational rehabilitation program. Confinement in a correctional facility continues as long as the individual is under a sentence of confinement and has not been released due to parole or

pardon. An individual is considered confined even if he or she is temporarily or intermittently outside of the facility on work release, attending school, hospitalized, or similar program.

* * *

(i) *Amount of pension at service-connected disability retirement.*

(1) Catastrophic Incapacity. The County must pay a Group F, E, or H member who retires on a service-connected disability retirement with catastrophic incapacity an annual pension calculated under Section 33-42(b)(1), except that:

(A) the County must substitute final earnings for average final earnings; and

(B) the pension must be at least 90% of the member's final earnings.

~~[(1)]~~ (2) Total incapacity. The County must pay a member who retires on service-connected disability retirement with total incapacity an annual pension calculated under Section 33-42(b)(1), except that:

(A) the County must substitute final earnings for average final earnings; and

(B) the pension must be at least 70% of the member's final earnings, except for a Group F, E, or H member. The pension must be at least 66⅔ % of the member's final earnings for a Group F, E, or H member.

~~[(2)]~~ (3) If the benefit calculation under Section 33-42(b)(1) is greater than any other benefit under this subsection, the County must pay a Group G member who retires on a service-connected disability

between June 26, 2002, and June 30, 2007, a pension based on the member's average final earnings if that member's average final earnings result in a greater benefit than final earnings.

[(3)] (4) The Disability Review Panel must recommend a finding of catastrophic incapacity or total incapacity for a Group F, E, or H member or total incapacity for a member of any other Group if the member's service-connected disability is severe enough to meet the Social Security Administration's requirements for disability, meaning that the member is unable to engage in any substantial gainful activity because of a medically determinable physical or mental impairment that can be expected to end in death or has lasted, or can be expected to last, for a continuous period of at least 12 months. The member does not have to qualify for Social Security disability benefits to be eligible for benefits under this subsection.

* * *

(D) If a member has already been granted disability benefits by the Social Security Administration when the member applies for a service-connected disability pension, the County must pay the member a pension of at least 66 $\frac{2}{3}$ % for a Group F, E or H member or 70% for a member of any other Group if the Disability Review Panel finds that the award of disability benefits from the Social Security Administration was based primarily on the same medically determinable physical or mental impairment on which the Disability Review Panel awards the member a service-connected disability benefit.

109 ~~[(4)]~~ (5) The County must pay a member who retires with partial
 110 incapacity on a service-connected disability retirement an annual
 111 pension calculated under Section 33-42(b)(1), but the benefit
 112 must be at least 60 % of final earnings for a Group F, E, or H
 113 member or at least 52½ % of final earnings for a member of any
 114 other Group, if the Chief Administrative Officer finds, based on a
 115 recommendation from the Disability Review Panel, that:

116 (A) the member meets the standards to receive a service-
 117 connected disability benefit under subsection (f); and

118 (B) the member is not eligible to receive a benefit for
 119 catastrophic or total incapacity under subsection [(i)(3)]
 120 (i)(1) or subsection (i)(2).

121 ~~[(5)]~~ (6) (A) The County must increase the partial incapacity service
 122 connected disability pension benefit of a member calculated
 123 under Section 33-42(b)(1), from a benefit of at least ~~[52½]~~ 60 %
 124 to a benefit of at least 66⅔ % for a Group F, E, or H member or
 125 from at least 52½ to at least 70% for a member of any other
 126 Group, if:

127 * * *

128 ~~[(6)]~~ (7)

129 * * *

130 ~~[(7)]~~ (8) The County must pay a Group F member who retires on a
 131 service-connected disability retirement on or after June 26, 2002,
 132 an annual pension calculated under subsection (i)(1), ~~[or]~~
 133 subsection (i)(2), or subsection ~~[(i)(4)]~~ (i)(5). However, if a
 134 greater benefit results from the calculation under Section 33
 135 42(b)(1), the County must pay a Group F member a pension

based on the member's average final earnings if that member's average final earnings result in a greater benefit than final earnings.

* * *

33-128. Definitions.

In this Division, the following words and phrases have the following meanings:

* * *

Catastrophic Incapacity means a member's inability to engage in any substantial gainful activity because of a permanent loss or loss of use of:

- (1) both arms;
- (2) both eyes;
- (3) both feet;
- (4) both hands;
- (5) both legs;
- (6) functional deafness; or
- (7) a combination of any two of the following body parts:
 - (A) arm;
 - (B) eye;
 - (C) foot;
 - (D) hand; or
 - (E) leg.

* * *

Correctional facility means a jail, prison, or other penal institution under the control and jurisdiction of the agency in charge of the penal system or in which convicted criminals can be incarcerated.

* * *

Felony means an offense that is classified as a felony under applicable law or, in a jurisdiction which does not classify any crime as a felony, is an offense punishable by death or by imprisonment for a term exceeding one year.

* * *

Represented employee means an employee who occupies a position in a bargaining unit represented by an employee organization certified under Section 33-106.

* * *

Vocational rehabilitation program means a court-approved program that a prisoner is actively and satisfactorily participating in and is expected to result in the prisoner being able to do substantial gainful activity upon release and within a reasonable time.

33-129. Disability benefits.

* * *

- (d) Initial service-connected disability benefits. An employee may receive disability benefits for a period of 36 consecutive months, subject to this plan, if the administrator finds that:

* * *

- (E) An employee, except a represented employee, who has committed an offense that would justify termination for misconduct must not receive service-connected disability benefits. A represented employee must not be paid a monthly benefit for any month on or after July 1, 2012 if the represented employee is confined in a correctional facility for conviction of a felony during any part of that month unless the represented employee is participating in a

vocational rehabilitation program. Confinement in a
correctional facility continues as long as the individual is
under a sentence of confinement and has not been released
due to parole or pardon. An individual is considered
confined even if he or she is temporarily or intermittently
outside of the facility on work release, attending school,
hospitalized, or similar program.

* * *

(f) The Disability Review Panel must recommend a finding of catastrophic incapacity or total incapacity for a represented employee, or total incapacity for any other employee, if the member's service-connected disability is severe enough to meet the Social Security Administration's requirements for disability, meaning that the member is unable to engage in any substantial gainful activity because of a medically determinable physical or mental impairment that can be expected to end in death or has lasted, or can be expected to last, for a continuous period of at least 12 months. The member does not have to qualify for Social Security disability benefits to be eligible for benefits under this subsection.

(1) The Panel must base its determination of whether an individual is able to engage in any substantial gainful activity on an assessment from an independent vocational expert that considers the member's age, education, work experience, transferable skills, and residual functional capacity.

(2) The Panel must determine the member's residual functional capacity and provide this information to the independent vocational expert.

(3) A Panel determination that the member's service-connected disability is severe enough to be considered a disability by the Social Security Administration is not a recommendation that the member is entitled to, or should be granted, a disability benefit by the Social Security Administration.

(4) If a member has already been granted disability benefits by the Social Security Administration when the member applies for a service-connected disability pension, the County must give the member a total incapacity benefit if the Disability Review Panel finds that the award of disability benefits from the Social Security Administration was based primarily on the same medically determinable physical or mental impairment on which the Disability Review Panel awards the member a service-connected disability benefit.

(g) The Disability Review Panel must recommend a finding of partial incapacity if:

- (1) the member meets the standards to receive a service-connected disability benefit; and
- (2) the member is not eligible to receive a benefit for catastrophic or total incapacity under subsection (f).

* * *

33-131. Amount of benefits.

(a) *Service-connected disability.*

(1) Catastrophic Incapacity. The County must pay a represented employee who retires on a service-connected disability retirement with catastrophic incapacity an annual pension equal to 90% of the represented employee's final earnings, less any reductions

provided in Section 33-134.

(2) Total Incapacity. The annual amount of service-connected disability payments payable to an employee, except a represented employee, for total incapacity equals 70% of the employee's final earnings, less any reductions provided in section 33-134. The County must pay a represented employee who retires on a service-connected disability retirement with total incapacity an annual pension equal to 66 $\frac{2}{3}$ % of the represented employee's final earnings, less any reductions provided in Section 33-134.

(3) Partial Incapacity. The annual amount of service-connected disability payments payable to an employee, except a represented employee, for partial incapacity equals 52½ % of the employee's final earnings. The County must pay a represented employee who retires on a service-connected disability retirement with partial incapacity an annual pension equal to 60% of the represented employee's final earnings.

* * *

Sec. 2. Expedited Effective Date.

The Council declares that this Act is necessary for the immediate protection of the public interest. The amendments to Chapter 33 made by Section 1 of this Act amend the provisions of Chapter 33 as amended by 2011 Laws of Montgomery County, Ch. 13, and take effect on July 1, 2012. The amendments to County Code Chapter 33 made by Section 1 of this Act apply to a service-connected disability retirement that arises out of a disabling accident, injury, or occupational disease which occurs on or after July 1, 2012.

LEGISLATIVE REQUEST REPORT
Expedited Bill 18-12

Personnel – Disability Retirement – Eligibility and Benefits - Amendments

DESCRIPTION: This Bill amends Chapter 33 to implement the March 29, 2012, Service-Connected Disability Retirement Interest Arbitration award, as provided for in Bill 45-10.

PROBLEM: Amend Chapter 33 to implement the March 29, 2012, Service-Connected Disability Retirement Interest Arbitration award.

GOALS AND OBJECTIVES: Amend Chapter 33 to implement the March 29, 2012, Service-Connected Disability Retirement Interest Arbitration award.

COORDINATION: Office of the County Attorney and Police Department.

FISCAL IMPACT: Office of Management and Budget.

ECONOMIC IMPACT: Office of Management and Budget.

EVALUATION: Subject to the general oversight of the County Executive and the County Council. The Office of the County Attorney will evaluate for form and legality.

EXPERIENCE ELSEWHERE: Unknown

SOURCES OF INFORMATION: Silvia C. Kinch
Associate County Attorney
Office of the County Attorney

Joseph Adler
Director
Office of Human Resources

APPLICATION WITHIN MUNICIPALITIES: None.

PENALTIES: Not applicable.




OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

April 18, 2012

TO: Roger Berliner, President
Montgomery County Council

FROM: Isiah Leggett, County Executive 

SUBJECT: Legislation to Implement the March 29, 2012, Service-Connected
Disability Retirement Interest Arbitration Award as Provided in Bill 45-10

As provided in Bill 45-10, attached please find legislation that would implement the March 29, 2012, Service-Connected Disability Retirement Interest Arbitration Award. Council staff was provided with a copy of the Arbitrator's decision on March 29, 2012. As you know, the Arbitrator selected the Fraternal Order of Police, Lodge 35's Last Best Final Offer. By transmitting this legislation I am not foregoing any legislative authority I may have under the County Charter.

As part of Bill 45-10, enacted June 28, 2011, and effective July 1, 2012, the County Council amended Chapter 33 of the County Code as it relates to service-connected disability retirement, but authorized separate negotiations with the certified employee representative for the police bargaining unit and the certified representative for the OPT and SLT bargaining units. The Fraternal Order of Police, Lodge 35, engaged in bargaining, negotiations and arbitration. The Municipal and County Government Employee's Association, UFCW Local 1994 also participated in bargaining, but chose not to actively participate in arbitration and instead to simply adopt the Arbitrator's award. The parties were unable to reach agreement and the matter proceeded to arbitration on March 22, 2012. The Arbitrator selected the Fraternal Order of Police, Lodge 35's Last Best Final Offer. In accordance with Section 4(d) of Bill 45-10, the Arbitrator's award was submitted to Council on March 29, 2012. The proposed expedited legislation incorporates the Arbitrator's award.

Attachments:

- A. Expedited Legislation
- B. Legislative Request Report
- C. Fiscal Impact Statement

In the Matter of Arbitration Between:

**FRATERNAL ORDER OF POLICE
LODGE 35**

and

**MONTGOMERY COUNTY (MD)
GOVERNMENT**

**Disability Retirement
Interest Arbitration**

Walt De Treux, Esq., Arbitrator

Hearing Date: 3/22/12

Decision Date: 3/29/12

Appearances: For the FOP – Francis J. Collins, Esq., *KAHN SMITH & COLLINS, P.A.*
For the County – Sylvia Kinch, Esq., *OFFICE OF COUNTY ATTORNEY*

Introduction and Statement of Relevant Facts

In July 2011, Montgomery County (Maryland) Council enacted Bill 45-10, which amended the County's disability retirement system for certain employees, including members of the police bargaining unit. Prior to enactment of the legislation, police officers who suffered injuries on the job that left them unable to perform the duties of a police officer were eligible for a disability retirement pension benefit equal to 66-2/3% of their final earnings. Bill 45-10 created categories of incapacity (partial or total incapacity) and levels of benefits for each category. Pursuant to the legislation, an officer incurring partial incapacity (inability to perform the duties of a police officer, but otherwise able to engage in other employment) would be entitled to a disability retirement pension equal to 52-1/2% of final earnings. A bargaining unit member who suffers total incapacity (an inability to engage in any substantial employment) would be entitled to a disability retirement pension equal to 70% of final earnings. Council also prohibited an

employee “who committed an offense that would justify termination for misconduct” from receiving disability retirement benefits.

While the legislation expressed Council’s desire that all Montgomery County employees have a multi-tier disability retirement system, Council recognized that disability benefits are a mandatory subject of bargaining. It, therefore, granted time for the County Executive to negotiate with the police bargaining unit over an appropriate multi-tier disability retirement system. If the parties failed to reach agreement, the parties were directed by the legislation to submit the issue for resolution through the applicable impasse procedures defined in the police labor relations law.

The parties attempted to negotiate, together and with a mediator, an appropriate multi-tier system. To that end, they agreed to a three-tier system and benefit levels for each tier, as follows:

Partial incapacity – 60% of final earnings

Total incapacity – 66-2/3% of final earnings

Catastrophic incapacity – 90% of final earnings¹

However, the parties were unable to agree to the County Executive’s proposed reduction in disability retirement benefits when an officer reaches Social Security Normal Retirement Age (SSNRA). While both parties found overly broad the Council’s intent to strip an officer of disability retirement benefits for

¹ Catastrophic incapacity has been defined as the loss of both arms, both eyes, both feet, both hands, both legs, or a combination of any two of the following: arm, eye, feet, hand, leg. The FOP proposal also included functional deafness, the definition of which had not been fully resolved by the parties at the time of hearing.

dischargeable misconduct, they could not agree on the appropriate standard that would disqualify a bargaining unit member from receiving benefits.

Pursuant to the impasse procedures provided in the police labor relations law, an arbitrator was appointed to hear the dispute. The parties submitted last best final offers to each other and the Arbitrator. On March 23, 2012, a hearing was held in Gaithersburg, Maryland, during which time both parties had a full and fair opportunity to present documentary and other evidence, examine and cross-examine witnesses, and offer argument in support of their respective positions. The parties rested their cases on the record, and the matter was submitted to the Arbitrator for a decision.

Issue

Which of the parties' last best final offers is to be adopted?

Last Best Final Offers

As noted, the parties agreed on the appropriate tiers and benefit levels. Accordingly, both parties' last best final offers include the following tiers and benefit levels: Partial incapacity – 60% of final earnings; Total incapacity – 66-2/3% of final earnings; Catastrophic incapacity – 90% of final earnings.

The County included three other items in its last best final offer, summarized as follows:

- 1) at normal social security retirement age, a reduction in the disability retirement benefit to 1.65% of final earnings, multiplied by the greater of

25 and the number of years of service at disability, limited to 36, and increased for the same COLAs that were applied to the pre-normal social security retirement age disability benefit.;

- 2) the denial of disability retirement benefits to an employee who commits a "significant criminal act" which leads to a conviction, provided the act occurs after date of hire and before separation from service with the County; and
- 3) for catastrophic incapacity, the calculation of final earnings as the member's final earnings or the final earnings for a Police Officer III with 20 years of service, whichever is greater.

The FOP rejected the County proposal for a reduction in benefits at SSNRA. While not expressly rejecting the final earnings calculation for a catastrophically incapacitated employee, the FOP noted that it did not receive the County proposal on this issue until the day of hearing and was not given sufficient time to review it and/or incorporate it into its own proposal.

The FOP's final offer accepted the 60%-66-2/3%-90% tier levels and benefits, as noted. It also included the following two items summarized below:

- 1) prohibiting an employee from receiving disability retirement benefits while incarcerated; and
- 2) confirming that tentative agreements reached by the parties during negotiations are part of the final award.²

² At hearing, the County did not contest that the tentative agreements are part of the final Award, although it did not include such a statement in its final offer. It was evident at hearing that both parties intended for the tentative agreements to be

Analysis and Decision

Due to the parties' dedicated and good faith efforts at reaching an agreement, the dispute presented to this Arbitrator is effectively limited to two issues – the reduction, if any, in disability retirement benefits when an officer reaches Social Security Normal Retirement Age; and the standard by which an officer will be ineligible for benefits because of criminal activity.

Pursuant to the parties' impasse procedure and Bill 45-10, the arbitrator is required to select either party's last best final offer in its entirety. He is not free to select specific provisions from each, or to craft compromises between the parties' proposals. In short, an arbitrator must select either the County's last best final offer or the FOP's last best final offer. In Bill 45-10, County Council specified the standards by which the arbitrator must evaluate the parties' last best final offers. In the legislation, the Council noted,

[the arbitrator] "must choose the final offer of either party after considering equally the following factors:

- (1) service-connected disability retirement systems for similar employees of other public employers in the Washington Metropolitan Area and in Maryland;
- (2) best practices for service-connected disability retirement systems for similar employees in the United States;
- (3) the interest and welfare of the public; and
- (4) the long-term ability of the employer to finance a disability retirement system, and the effect of the cost of the system on the normal standard of public services provided by the employer.

binding on the parties regardless of which last best final offer is adopted in this Award.

Reduction of benefits at Social Security Normal Retirement Age

In Bill 45-10, County Council expressly stated in Section 33-131(4)(a),

"It is the policy of Montgomery County that all County employees should have a multi-tier service-connected disability retirement system which includes a:

- (1) partial incapacity service-connected disability retirement benefit for any injury or illness that prevents an employee from continuing in the employee's current position but does not prevent the employee from engaging in other substantial gainful employment; and
- (2) total incapacity service-connected disability retirement benefit for any injury or illness that prevents an employee from engaging in any other substantial gainful employment.

The Council did not specify why it determined such a policy was appropriate; but in legislating a multi-tier system that provided a lesser benefit for partial incapacity, the Council acknowledged its concern with a partially incapacitated officer, able to engage in other employment, receiving the same benefit as a totally incapacitated officer, who is precluded from earning additional income.

It can be reasoned that the primary goal of Council in passing Bill 45-10 was accomplished when the parties agreed to the partial (60%)-total (66-2/3%)-catastrophic (90%) tier and benefit levels. It must be noted, however, that Bill 45-10 also resulted in projected savings to the County (in the form of reduced contributions) of approximately \$1.3 million for FY2013. According to plan actuary Douglas Rowe of Mercer, the parties' three-tier system provides for a savings of \$631,000.^{3 4}

³ Rowe also provided savings projections for non-union employees. Those figures are not considered in this Award.

⁴ Joseph Duda, of Duda Actuarial Consulting, retained by the FOP, projected savings of \$771,000, an amount that he considered actuarially consistent with Rowe's projections. Because Rowe also provided cost estimates for the County's last best final offer and the competing actuaries have no substantial disagreement, this Award adopts Rowe's projections throughout.

The County Executive deemed it necessary to present a proposal that roughly matched the savings anticipated by Bill 45-10. Accordingly, it introduced the concept of a reduction in disability benefits when an officer reached Social Security Normal Retirement Age. It adopted a reduction to 1.65% of final earnings from a provision in the normal service retirement system, which reduces the benefit of an officer on service retirement to that amount when he/she reaches SSNRA. The projected savings achieved by the multi-tier system with the SSNRA-triggered reduction total \$1.235 million in FY2013⁵.

While the County's effort to maintain a certain level of savings is understandable, Council did not specify in Bill 45-10 that the parties had to achieve the level of savings generated by County Council's 52.5%-70% disability retirement system. Rather, it instructed the parties to negotiate "an appropriate multi-tier system" and mandated that the arbitrator apply four specific factors to his evaluation of the parties' last best final offer. The County's proposal for a reduction in disability retirement benefits at SSNRA does not withstand scrutiny under the four factors provided by Bill 45-10.

The County could not identify any service-connected disability retirement systems for similar employees of other public employers in the Washington Metropolitan Area and in Maryland that provide for a reduction in disability benefits at SSNRA. Both Director of Human Resources Joseph Adler and Plan Actuary Rowe testified that they were not aware of any jurisdiction in Maryland that provided for such a reduction in benefits. Rowe, who also found no such system in the Metro DC

⁵ This figure includes the final earnings formula in the County's last best final offer for an officer who has a catastrophic incapacity.

area, cited Frederick County, Maryland as a jurisdiction that converts a disability retirement benefit to a normal service retirement benefit at SSNRA. But the County is not seeking a conversion as exists in Frederick County; but rather, it is seeking a reduction in disability retirement benefits at SSNRA. The systems do not compare.

Rowe noted that Montgomery County reduces a normal service retirement benefit to 1.65% of final earnings at SSNRA. Bill 45-10 does not require this Arbitrator to look within the County itself, but rather, at the surrounding jurisdictions. Even if the County's own practice was taken into consideration, it stands alone among surrounding jurisdictions in mandating such a reduction.

The second factor to be evaluated under Bill 45-10 is "best practices for service-connected disability retirement systems for similar employees in the United States." "Best practices" presumes that other jurisdictions in the United States have adopted the provision in dispute and that it has gained some widespread recognition or acceptance as an appropriate method to manage disability retirement benefits. The County could not cite any jurisdiction in the United States that includes such a SSNRA-triggered reduction provision in its disability retirement system. FOP Actuary Duda had also never come across such a provision.

"The interest and welfare of the public" is the third factor to be examined. The County did not offer testimony as to how the public interest and welfare is improved or protected by reducing a disabled officer's retirement benefits at SSNRA. FOP President Marc Zifcak offered that the public is better protected by an officer who knows he/she will not suffer financially if he/she is injured on the job. Zifcak theorized that the public couldn't afford to have an officer hesitate to act out

of concern for injury and any negative financial consequences that could result. Neither parties' presentation persuasively established that the inclusion or absence of a reduction provision would have any significant impact on the interest and welfare of the public.

Finally, Bill 45-10 requires this Arbitrator to consider the long-term ability of the County to finance a disability retirement system and the effect of the cost of the system on public services. The parties' agreement on a multi-tier system of incapacity and benefit levels results in considerable savings to the County, thereby strengthening its ability to finance the disability system and freeing money to be used for other public services. Certainly, the County Executive's proposal for a reduction in benefits at SSNRA increases those savings. But it is an unconventional and untried approach that does not share acceptance or recognition in the Washington Metropolitan Area, in Maryland, or anywhere in the United States. And it has not been demonstrated that it has any beneficial effect on the interest and welfare of the public.

If the only focus of Bill 45-10 was to generate savings, Council could have crafted a system that provided for even more drastic reductions in benefits either at the time of disability or at SSNRA. It did not do so; rather it encouraged the parties to negotiate an appropriate disability retirement system that mirrored the systems in other jurisdictions, served the interest and welfare of the public, and provided long-term financial stability to the system with a positive effect on other public services.

The parties' agreement on a multi-tier system of incapacity and benefit levels achieves these goals. The County's proposal to reduce benefits at SSNRA was solely motivated by a desire to reach approximately the same level of savings as would be realized under Bill 45-10. Council did not require such a level of savings; and the parties' agreement already produces substantial savings in FY2013 and for many years to come.

The County's proposal for a reduction in benefits at SSNRA does not comport with the factors to be considered under Bill 45-10. The parties' agreement on a multi-tier system that provides for a 60% benefit for partial incapacity, 66-2/3% for total incapacity, and 90% for catastrophic incapacity creates an appropriate disability retirement system consistent with the policy goals of Bill 45-10.

Denial of benefits for criminal conduct

Bill 45-10 contains a provision denying disability retirement benefits to an officer who commits an offense "that would justify termination for misconduct." Both parties recognize that prohibition as overly broad, and neither could adequately explain the Council's motivation for including such a provision in the legislation.

The County asserted that officers charged with misconduct often file disability claims, suggesting that those claims were suspect; but it acknowledged that such claims had to be evaluated and found to have merit by a disability review board. There was no evidence or allegation that the review board granted disability retirement benefits to officers with meritless claims.

Nonetheless, Bill 45-10's broad misconduct language compelled the parties to craft alternatives. The County proposed in its last best final offer that officers committing a "significant criminal act"⁶ resulting in a conviction be denied eligibility for disability retirement benefits. The FOP's proposal requires the suspension of benefits during any period of incarceration. Those proposals have to be evaluated under the four factors enunciated in Bill 45-10.

There is no question that the County worked diligently and in good faith to craft a proposal that addressed what it perceived as Council's concern. But Lieutenant David Anderson admitted that the "significant criminal act" standard was not adopted from other public employers in the Metro Washington Area or in Maryland. Rather, the standard was the result of internal deliberations among County and Police Department representatives.

The FOP proposal for suspension of benefits during incarceration did not specifically arise from surrounding jurisdictions, but it was adopted from Social Security regulations. Code of Federal Regulations §404.468(a) provides,

"No monthly benefits shall be paid to any individual for any month any part of which the individual is confined in a jail, prison, or other penal institution or correctional facility for conviction of a felony. This rule applies to disability benefits..."

In the absence of any evidence that other jurisdictions around Montgomery County or elsewhere have adopted criminal act provisions in their disability retirement systems, the Social Security standard, applicable throughout the United

⁶ The proposal defines "significant criminal act" as one resulting "in confinement of at least 30 days and/or any type of probation of at least 60 days", excluding traffic code violations.

States, stands as a “best practice” for handling the effects of a criminal conviction on disability retirement benefits.

The County generally offered that the interest and welfare of the public is not served by officers filing for disability retirement benefits prior to or after being charged with a criminal act. The unstated implication was that the officers are attempting to secure these benefits to ensure income in the face of likely termination of employment. Yet the County admitted that it had no evidence as to whether the alleged problem is widespread. It conceded that all disability claims have to be vetted by the disability review board, and it acknowledged that an investigation by the Inspector General did not uncover any systemic fraud.

The FOP asserted its position that the interest and welfare of the public is best served by officers who, when incurring injuries in the line of duty, are financially protected from the effects of those injuries. It labeled the County proposal as “draconian”, and it cited a hypothetical situation of a 25-year old officer, injured in the line of duty, who loses a lifetime of benefits because he engaged in some minor criminal conduct that resulted in 60 days probation. The FOP argues that the officer pays his debt to society by serving the 60 days probation, but pays a much greater penalty imposed by the County when he loses benefits, to which he is otherwise entitled, for the remainder of his life. Such a disproportionate penalty serves no public interest.

The FOP argument against the County proposal is persuasive, and the FOP proposal, borrowed from federal regulations, better serves the public interest and welfare.


The parties agree that incidents of officers engaging in criminal conduct that result in incarceration or probation are rare. Inclusion of either party's proposal will have no significant effect on the long-term ability of the County to finance the disability retirement system.

Considering that no surrounding jurisdiction includes a criminal conviction provision in its disability retirement system, that the FOP proposal adopts the "best practices" on criminal conviction from Social Security regulations, that the FOP proposal better serves the public interest and welfare, and that the parties' proposals do not impact the financial stability of the County's disability retirement system, I find that only the FOP proposal comports with the factors enunciated in Bill 45-10.

In conclusion, applying the factors in Bill 45-10 as explained above, I find that the FOP last best final offer creates an appropriate multi-tier disability retirement system that achieves the goals set forth by County Council.

Award

The FOP last best final offer is adopted. The County Executive is directed to submit this Award to Council pursuant to Bill 45-10, Section 33-131(4)(d) no later than April 1, 2011.


WALT De TREUX



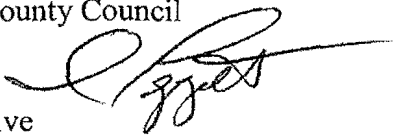
OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

April 26, 2012

TO: Roger Berliner, President
Montgomery County Council

FROM: Isiah Leggett 
County Executive

SUBJECT: MCGEO's Inclusion in Service-Connected Disability Retirement Arbitration Award

As I mentioned in my prior memorandum to you dated April 18, 2012, the Municipal County Government Employee's Organization, UFCW Local 1994 ("MCGEO"), and the Fraternal Order of Police, Lodge 35 ("FOP") participated in bargaining with my representative over service-connected disability retirement as required by Section 4 of Bill 45-10, which was enacted by Council on July 11, 2011. MCGEO and the County agreed that, although MCGEO would not actively participate in the subsequent arbitration, it would be a party to that arbitration and any award would apply to MCGEO just as it applied to the FOP. Arbitration occurred on March 22, 2012, between the FOP and the County, with a representative from MCGEO present during the hearing. As you are aware, the Arbitrator selected FOP's Last Best Final Offer. That award also applies to MCGEO. In accordance with Section 4(d) of Bill 45-10, the Arbitrator's award was submitted to Council on March 29, 2012, and the County Executive transmitted proposed legislation to incorporate the Arbitrator's award on April 18, 2012.

IL:kb



ROCKVILLE, MARYLAND

MEMORANDUM

April 16, 2012

TO: Roger Berliner, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: Bill xx-12 - Service Connected Disability Retirement

Attached please find the fiscal and economic impact statements for legislation that will implement the March 29, 2012 arbitration award regarding service-connected disability retirement for members of the police bargaining unit.

c: Kathleen Boucher, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph Adler, Director, Office of Human Resources
Alex Espinosa, Office of Management and Budget
Naeem Mia, Office of Management and Budget

Fiscal Impact Statement
Bill, Service Connected Disability Retirement

1. Legislative Summary

As provided in Bill 45-10, the subject legislation implements the Arbitrator's decision in the March 29, 2012 service-connected disability retirement arbitration award to the Fraternal Order of Police (FOP), Lodge 35. County Council staff was provided with a copy of the arbitration award on March 29. The bill establishes a multi-tiered disability retirement system under certain criteria of either the greater of the accrued benefit or 60 percent, 66 2/3 percent, or 90 percent of final earnings, depending on the level of the disability. Functional hearing loss is included as one of the conditions enabling a member to be eligible for a disability retirement benefit of 90 percent of final earnings. The legislation covers employees in Groups A, E, F, and H of the Employees Retirement System.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

Mercer, the County's retirement plan actuary, estimates a minimum annual cost of \$852,000 relative to the proposed FY13 budget to implement the arbitration award. Mercer is unable to make an appropriate assumption regarding the increased incidence of functional hearing loss that would entitle a member to a disability benefit of 90 percent of final earnings, but did estimate that annual costs could increase by an additional \$73,000 to \$91,000 for each 1 percent of disablements who receive the 90 percent benefit. According to Mercer, this 1 percent assumption does not represent a best estimate of the impact; the actual impact could be much higher, lower, or even negligible. The attachments include more detailed cost estimates by plan and actuarial assumptions.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

The minimum cost over six years is \$5.112 million. There could be an additional six-year cost between \$438,000 and \$546,000 for each additional 1 percent of disablements who receive the 90 percent benefit level.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

See attached actuarial analysis.

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable.

6. An estimate of the staff time needed to implement the bill.

The bill does not affect the amount of staff time engaged in the disability retirement administration system.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

Not applicable.

8. An estimate of costs when an additional appropriation is needed.

An additional appropriation of at least \$852,000 relative to the FY13 proposed budget is needed to implement the bill.

9. A description of any variable that could affect revenue and cost estimates.

See attached actuarial analysis.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

See #2 and #3 above.

11. If a bill is likely to have no fiscal impact, why that is the case.

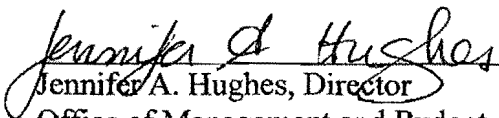
Not applicable.

12. Other fiscal impacts or comments.

None.

13. The following contributed to and concurred with this analysis:

Joseph Adler, Director, Office of Human Resources
Alex Espinosa, PSP Manager, Office of Management and Budget


Jennifer A. Hughes, Director
Office of Management and Budget

4/11/12
Date

Economic Impact Statement
Council Bill XX-12 (amendment to Bill 45-10)
-Service Connected Disability Retirement

Background:

As provided in Bill 45-10, the subject legislation implements the Arbitrator's decision in the March 29, 2012 service-connected disability retirement arbitration award to the Fraternal Order of Police (FOP), Lodge 35. County Council staff was provided with a copy of the arbitration award on March 29. The bill establishes a multi-tiered disability retirement system under certain criteria of either the greater of the accrued benefit or 60 percent, 66 2/3 percent, or 90 percent of final earnings, depending on the level of the disability. Functional hearing loss is included as one of the conditions enabling a member to be eligible for a disability retirement benefit of 90 percent of final earnings. The legislation covers employees in Groups A, E, F, and H of the Employees Retirement System.

1. The sources of information, assumptions, and methodologies used.

The Department of Finance relied on the analysis performed by Mercer, the retirement plan's actuary. Mercer indicated the minimum annual cost of this legislation (to implement the arbitration award at \$852,000 and a minimum cost over six years of \$5.112 million. There could be an additional six-year cost between \$438,000 and \$546,000 for each additional 1 percent of disablements who receive the 90 percent benefit level.

2. A description of any variable that could affect the economic impact estimates.
Not applicable. See #3 below.

3. The Bill's positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.
The annual expenditure impact of the proposed legislation is not significant enough to cause a quantifiable impact on the County's employment, spending, saving, or other relevant economic indicators.

4. If a Bill is likely to have no economic impact, why is that the case?
See #3 above.

5. The following contributed to and concurred with this analysis: David Platt and Mike Coveyou, Finance.



Joseph F. Beach, Director
Department of Finance

4-11-12
Date



Douglas Rowe, FSA, EA, MAAA
Principal

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Via Electronic Mail

Mr. Joseph Adler
Director of Office of Human Resources
Montgomery County Government
101 Monroe Street, Seventh Floor
Rockville, MD 20850-2589

April 4, 2012

Subject: Proposal on Disability Provisions for FOP – *Updated From Our March 21, 2012 Letter to Reflect "Functional Hearing Loss" Provision*

Dear Joe:

The purpose of this letter is to address the inclusion of "functional hearing loss" among the "*certain criteria*" described later in this letter for which members would be eligible for a benefit equal to 90% of pay at disability. This letter only addresses the impact of this provision on the Montgomery County Employees' Retirement System (ERS) and only for Group F.

As we discussed, we have no way of determining what would be an appropriate assumption for the increased incidence of 90% of pay benefits with this new provision in the absence of further information about how the provision would be administered. One explanation says "Functional hearing loss involves a psychological or emotional problem, rather than physical damage to the hearing pathway. Individuals with this type of hearing loss do not seem to hear or respond; yet, in reality, they have normal hearing." We are not experts in hearing or disability administration or determination, but this explanation seems to us to allow a broad range of possible outcomes for employees to receive the proposed 90% benefit level.

As we agreed, to illustrate the cost impact of a 1% increase in the incidence of the 90% of pay benefits and to provide a range of results, we have modified the results from our letter dated March 21, 2012 to reflect two additional scenarios, which increase the assumed rate of service-connected disabilities that meet "*certain criteria*" by 1% and decrease the assumed rate of the other service-related disabilities per the following scenarios:

- **Scenario 1** – decreases the assumed rate of disabilities qualifying for the 66 2/3% benefit by 1%. No changes to the assumed rate of disabilities qualifying for the 60% benefit
- **Scenario 2** – decreases the assumed rate of disabilities qualifying for the 60% benefit by 1%. No changes to the assumed rate of disabilities qualifying for the 66 2/3% benefit

The changes reflected in this letter are based on our understanding of the set of proposed plan changes you provided.

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April 4, 2012
Mr. Joseph Adler
Montgomery County Government

The estimates are based on the July 1, 2011 actuarial valuation data. The data, actuarial assumptions and methods, and plan provisions are the same as those used in our July 1, 2011 actuarial valuation report unless otherwise noted. Actual costs will depend on the actual experience of the plan. By cost, we mean the change in Normal Cost and amortization payment according to the County's policy. The benefit changes are assumed to apply only to active ERS members, not to retirees or terminated vested members, with the exception of the retroactivity of the 90% benefit level to July 1, 2004.

As requested, we have estimated the impact of the plan changes on the FY2013 County contributions. We have compared the impact against the budgeted FY2013 contributions provided in the July 1, 2011 actuarial valuation report, which reflect the disability plan provisions effective July 1, 2012. Reflecting the impact of these proposals in the FY2013 contribution would be a year earlier than the most common recognition of past plan improvements by the County, which often would have been reflected in the valuation following the change and funded in the fiscal year beginning a year after the valuation date. However, reflecting this improvement at the same time, i.e. in the FY2013 contribution, as the other disability changes seems appropriate.

Description of Proposed Plan Provision Changes

Following is the description of the proposed plan changes you provided.

- The benefit amount for a group F member who applies for service-connected disability on or after July 1, 2012 and doesn't satisfy the "*certain criteria*" outlined below is:
 - For a disabled employee "determined not able to perform any substantial gainful employment, as defined in Social Security's standards," but who would not satisfy the "*certain criteria*" outlined below: the greater of the accrued benefit or 66 2/3% of final earnings
 - For other disabilities that do not satisfy the "*certain criteria*" outlined below: the greater of the accrued benefit or 60% of final earnings
- The benefit amount for a group F member who applies for service-connected disability on or after July 1, 2004 and retires on a service-connected disability retirement is:
 - For disability meeting *certain criteria* (para or quadriplegia, loss of limb, functional hearing loss, etc. as specified in the Final Offer of Fraternal Order of Police, Montgomery County Lodge 35, dated March 21, 2012): the greater of the accrued benefit or 90% of final earnings

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Mr. Joseph Adler
Montgomery County Government

- The non-service-connected disability retirement benefit amount and other plan provisions would remain the same as described in the July 1, 2011 actuarial valuation report.

Actuarial Assumptions

Except as noted below, all the assumptions used in this analysis are the same as those used in the July 1, 2011 valuation.

Assumptions for Service-connected disability	March 21, 2012 estimates	Scenario 1	Scenario 2
Receiving 60% benefit	65.0%	65.0%	64.0%
Receiving 66 2/3% benefit	26.2%	25.2%	26.2%
Receiving 90% benefit	1.8%	2.8%	2.8%
Receiving 90% benefit	1.8%	2.8%	2.8%
Total	93.0%	93.0%	93.0%

- We understand that there is one current disabled retiree who would qualify for the 90% minimum benefit. As discussed over the phone with the County, the retiree was receiving \$3,877.16 per month at retirement in 2007 and is currently age 46. Based on the 2007 valuation data, that member has been included in the contribution impact for union members shown below. Please note that we did not receive information for any current retirees that would be eligible for the "functional hearing loss" benefit as a result of the plan change. If there are any, it could increase the cost impact substantially and a revision to this letter may be required. Please let us know if you're aware of any.
- We assumed that the Social Security standard for suspending benefits during incarceration would not result in any reduction in contributions until after such suspensions occurred. We did not attempt to quantify the impact on any future contributions due to this provision.
- All other assumptions are the same as those under the Union's LBFO as described in our March 21, 2012 letter.

Contribution Impact

The estimated contribution impact of this proposal based on the results from the 2011 valuation and budgeted FY2013 contribution is shown below.

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Mr. Joseph Adler
Montgomery County Government

The amounts shown below are rounded to the nearest thousand.

Scenario 1:

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$5,566,000	\$87,000	\$5,653,000
Normal Cost	\$277,000	\$3,000	\$281,000
FY2013 Contribution	\$652,000	\$9,000	\$661,000

*Numbers may not add due to rounding.

Since the FY2013 contribution was estimated to increase \$614,000 in the March 21, 2012 letter, each 1% of disablements who receive the 90% benefit instead of the 66 2/3% benefit increases the County's contribution by \$47,000 (\$661,000 - \$614,000).

Scenario 2:

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$5,657,000	\$90,000	\$5,747,000
Normal Cost	\$282,000	\$3,000	\$286,000
FY2013 Contribution	\$663,000	\$9,000	\$672,000

*Numbers may not add due to rounding.

Since the FY2013 contribution was estimated to increase \$614,000 in the March 21, 2012 letter, each 1% of disablements who receive the 90% benefit instead of the 60% benefit increases the County's contribution by \$58,000 (\$672,000 - \$614,000).

Note that the portion of the contribution due to the change in Actuarial Accrued Liability is amortized as a level percentage of assumed payroll over 20 years.

Please also note that the results shown above reflect the impact on the FY2013 contribution. If these changes were adopted, they may first be reflected in the 2012 actuarial valuation report and FY2014 budgeted contribution, or even later (depending on when the changes are adopted and when the County decides to reflect them).

Additional Considerations

With the changes to disability benefits for certain service-connected disablements, it is possible that the frequency of disability claims could change. This could change the impact on County contribution amounts shown in this letter.

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Mr. Joseph Adler
Montgomery County Government

Additionally, in the short term, the more generous COLAs available for service retirement benefits for service prior to June 30, 2011, as opposed to disability retirements after June 30, 2011, could result in a decrease to the number of disability claims in the near future.

We did not attempt to quantify the impact of either of the above.

Impacts on any amounts reflecting the most recent GASB 27 exposure draft have not been incorporated into the results in this letter. This would require additional calculations beyond the scope of this letter.

Important Notices

Mercer has prepared this letter exclusively for Montgomery County; Mercer is not responsible for reliance upon this letter by any other party. Subject to this limitation, Montgomery County may direct that this letter be provided to its auditors.

The only purpose of this letter is to provide analyses of the specified changes on annual contribution amounts in order to help the County with collective bargaining. This letter may not be used for any other purpose; Mercer is not responsible for the consequences of any unauthorized use.

Decisions about benefit changes, granting new benefits, investment policy, funding policy, benefit security and/or benefit-related issues should not be made on the basis of this letter, but only after careful consideration of alternative economic, financial, demographic and societal factors, including financial scenarios that assume future sustained investment losses.

This letter only represents a snapshot of a Plan's estimated financial condition at a particular point in time; it does not predict the Plan's future financial condition or its ability to pay benefits in the future and does not provide any guarantee of future financial soundness of the Plan. Over time, a plan's total cost will depend on a number of factors, including the amount of benefits the plan pays, the number of people paid benefits, the period of time over which benefits are paid, plan expenses and the amount earned on any assets invested to pay benefits. These amounts and other variables are uncertain and unknowable at the date of the analysis.

Because modeling all aspects of a situation is not possible or practical, we may use summary information, estimates, or simplifications of calculations to facilitate the modeling of future events in an efficient and cost-effective manner. We may also exclude factors or data that are immaterial

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April 4, 2012
Mr. Joseph Adler
Montgomery County Government

in our judgment. Use of such simplifying techniques does not, in our judgment, affect the reasonableness of analysis results for the plan.

To prepare this letter, actuarial assumptions, as described herein and in the July 1, 2011 actuarial valuation report, are used in a forward looking financial and demographic model to select a single scenario from a wide range of possibilities; the results based on that single scenario are included in this letter. The future is uncertain and the plan's actual experience will differ from those assumptions; these differences may be significant or material because these results are very sensitive to the assumptions made and, in some cases, to the interaction between the assumptions.

Different assumptions or scenarios within the range of possibilities may also be reasonable and results based on those assumptions would be different. As a result of the uncertainty inherent in a forward looking projection over a very long period of time, no one projection is uniquely "correct" and many alternative projections of the future could also be regarded as reasonable. Two different actuaries could, quite reasonably, arrive at different results based on the same data and different views of the future. Due to the limited scope of Mercer's assignment, Mercer will not perform or present an analysis of the potential range of future possibilities and scenarios when requested. At the County's request, Mercer is available to determine the cost of a range of scenarios.

Actuarial assumptions may also be changed from one valuation to the next because of changes in mandated requirements, plan experience, changes in expectations about the future and other factors. A change in assumptions is not an indication that prior assumptions were unreasonable when made.

The calculation of actuarial liabilities for valuation purposes is based on a current estimate of future benefit payments. The calculation includes a computation of the "present value" of those estimated future benefit payments using an assumed discount rate; the higher the discount rate assumption, the lower the estimated liability will be. For purposes of estimating the liabilities (future and accrued) in this letter, the County selected an assumption based on the expected long term rate of return on plan investments. Using a lower discount rate assumption, such as a rate based on long-term bond yields, could substantially increase the estimated present value of future and accrued liabilities, thus increasing the savings estimated in this letter, but also increasing the cost of the remaining benefits.

Because analyses are a snapshot in time and are based on estimates and assumptions that are not precise and will differ from actual experience, contribution calculations are inherently imprecise. There is no uniquely "correct" level of contributions for a particular plan year.

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Mr. Joseph Adler
Montgomery County Government

Valuations do not affect the ultimate cost of the Plan, only the timing of contributions into the Plan. Plan funding occurs over time. Contributions not made this year, for whatever reason, including errors, remain the responsibility of the Plan sponsor and can be made in later years. If the contribution levels over a period of years are lower or higher than necessary, it is normal and expected practice for adjustments to be made to future contribution levels to take account of this with a view to funding the plan over time.

Data, computer coding, and mathematical errors are possible in the preparation of results involving complex computer programming and thousands of calculations and data inputs. Errors in a valuation discovered after its preparation may be corrected by amendment to this analysis letter.

Assumptions used are based on the last experience study, as adopted by the County and the Board of Investment Trustees. The County is responsible for selecting the plan's funding policy, actuarial valuation methods, asset valuation methods, and assumptions. The policies, methods and assumptions used in this letter are those that have been so prescribed and are described herein. The County is solely responsible for communicating to Mercer any changes required thereto.

To prepare this letter Mercer has used and relied on financial data and participant data supplied by the County and summarized herein. The County is responsible for ensuring that such participant data provides an accurate description of all persons who are participants under the terms of the plan or otherwise entitled to benefits as of July 1, 2011 that is sufficiently comprehensive and accurate for the purposes of this report. Although Mercer has reviewed the data in accordance with Actuarial Standards of Practice No. 23, Mercer has not verified or audited any of the data or information provided.

Mercer has also used and relied on the plan documents, including amendments, and interpretations of plan provisions, supplied by the County as summarized herein. We have assumed for purposes of this letter that copies of any official plan document including all amendments and collective bargaining agreements as well as any interpretations of any such document have been provided to Mercer along with a written summary of any other substantive commitments. The County is solely responsible for the validity, accuracy and comprehensiveness of this information. If any data or plan provisions supplied are not accurate and complete, the results may differ significantly from the results that would be obtained with accurate and complete information; this may require a later revision of this report. Moreover, plan documents may be susceptible to different interpretations, each of which could be reasonable, and that the different interpretations could lead to different results.

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April 4, 2012
Mr. Joseph Adler
Montgomery County Government

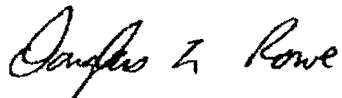
The County should notify Mercer promptly after receipt of this letter if the County disagrees with anything contained in this report or is aware of any information that would affect the results of this report that has not been communicated to Mercer or incorporated therein. This report will be deemed final and acceptable to the County unless the County promptly provides such notice to Mercer.

All costs, liabilities, and other factors under the plan were determined in accordance with generally accepted actuarial principles and procedures. Funding calculations reflect the provisions of current statutes and regulations issued hereunder. In our opinion, the actuarial assumptions are reasonable and represent our best estimate of the anticipated experience under the plan.

Professional Qualifications

We are available to answer any questions on the material contained in the report, or to provide explanations of further details as may be appropriate. The undersigned credentialed actuaries meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained in this report. We are not aware of any direct or material indirect financial interest or relationship, including investments or other services that could create a conflict-of-interest, that would impair the objectivity of our work.

Sincerely,



Douglas L. Rowe, FSA, MAAA, EA
Principal



James M. Baughman, ASA, MAAA, EA
Senior Associate

Copy:
Belinda Fulco, Montgomery County Government

The information contained in this document (including any attachments) is not intended by Mercer to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code that may be imposed on the taxpayer.

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Douglas Rowe, FSA, EA, MAAA
Principal

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Via Electronic Mail

Mr. Joseph Adler
Director of Office of Human Resources
Montgomery County Government
101 Monroe Street, Seventh Floor
Rockville, MD 20850-2589

April 9, 2012

Subject: Proposal on Disability Provisions for Groups A, E, and H

Dear Joe:

The purpose of this letter is to provide the cost estimate you requested for the proposal to revise the disability provisions for groups A, E, and H of the Montgomery County Employees' Retirement System (ERS) to match the changes in the March 21, 2012 Union BAFO letter for group F. This letter also addresses the potential inclusion of "functional hearing loss" among the "*certain criteria*" described later in this letter for which group A, E, and H members would be eligible for a benefit equal to 90% of pay at disability.

The changes reflected in this letter are based on our understanding of the set of proposed plan changes you provided. As discussed, we did not reflect any retroactive benefits pertaining to the 90% pay benefit level to July 1, 2004.

The estimate is based on the July 1, 2011 actuarial valuation data. The data, actuarial assumptions and methods, and plan provisions are the same as those used in our July 1, 2011 actuarial valuation report unless otherwise noted. Actual costs will depend on the actual experience of the plan. By cost, we mean the change in Normal Cost and amortization payment according to the County's policy. The benefit changes are assumed to apply only to active ERS members, not to retirees or terminated vested members.

As we discussed, we have no way of determining what would be an appropriate assumption for the increased incidence of 90% of pay benefits with the functional hearing loss provision in the absence of further information about how the provision would be administered. One explanation says "Functional hearing loss involves a psychological or emotional problem, rather than physical damage to the hearing pathway. Individuals with this type of hearing loss do not seem to hear or respond; yet, in reality, they have normal hearing." We are not experts in hearing or disability administration or determination, but this explanation seems to us to allow a broad range of possible outcomes for employees to receive the proposed 90% benefit level.

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Due to this uncertainty over the impact of adding functional hearing loss, we have illustrated the cost impact of a 1% increase in the incidence of the 90% of pay benefits for groups A, E, and H by including two additional scenarios ("Scenario 2 and Scenario 3"), which increase the assumed rate of service-connected disabilities that meet "*certain criteria*" by 1% and decrease the assumed rate of the other service-related disabilities. The 1% assumption does not represent a best estimate of the impact; the actual impact could be much higher, lower, or even negligible. A summary of the assumed rates for each benefit is shown under the Actuarial Assumptions section below.

As requested, we have estimated the impact of the plan changes on the FY2013 County contributions. We have compared the impact against the budgeted FY2013 contributions provided in the July 1, 2011 actuarial valuation report, which reflect the disability plan provisions effective July 1, 2012. Reflecting the impact of these proposals in the FY2013 contribution would be a year earlier than the most common recognition of past plan improvements by the County, which often would have been reflected in the valuation following the change and funded in the fiscal year beginning a year after the valuation date. However, reflecting this improvement at the same time, i.e. in the FY2013 contribution, as the other plan changes that are effective July 1, 2012 seems appropriate.

Description of Proposed Plan Provision Changes

Following is the description of the proposed plan changes you provided.

- The benefit amount for group A, E, or H members who apply for service-connected disability on or after July 1, 2012 and do not satisfy the "*certain criteria*" outlined below is:
 - For a disabled employee "determined not able to perform any substantial gainful employment, as defined in Social Security's standards," but who would not satisfy the "*certain criteria*" outlined below: the greater of the accrued benefit or 66 2/3% of final earnings
 - For other disabilities that do not satisfy the "*certain criteria*" outlined below: the greater of the accrued benefit or 60% of final earnings
- The benefit amount for group A, E, or H members who apply for service-connected disability on or after July 1, 2004 and retire on a service-connected disability retirement is:
 - For disability meeting *certain criteria* (para or quadriplegia, loss of limb, functional hearing loss, etc. as specified in the Final Offer of Fraternal Order of Police, Montgomery County Lodge 35, dated March 21, 2012): the greater of the accrued benefit or 90% of final earnings

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- The non-service-connected disability retirement benefit amount and other plan provisions would remain the same as described in the July 1, 2011 actuarial valuation report.

Actuarial Assumptions

Except as noted below, all the assumptions used in this analysis are the same as those used in the July 1, 2011 valuation.

Groups A and H

Assumptions for Service-connected disability	Base Scenario	Scenario 2	Scenario 3
Receiving 60% benefit	20.0%	20.0%	19.0%
Receiving 66 2/3% benefit	18.7%	17.7%	18.7%
Receiving 90% benefit	1.3%	2.3%	2.3%
Total service-connected as % of all disabilities	40.0%	40.0%	40.0%

Group E

Assumptions for Service-connected disability	Base Scenario	Scenario 2	Scenario 3
Receiving 60% benefit	60.0%	60.0%	59.0%
Receiving 66 2/3% benefit	23.4%	22.4%	23.4%
Receiving 90% benefit	1.6%	2.6%	2.6%
Total service-connected as % of all disabilities	85.0%	85.0%	85.0%

- We assumed that the Social Security standard for suspending benefits during incarceration would not result in any reduction in contributions until after such suspensions occurred. We did not attempt to quantify the impact on any future contributions due to this provision.
- Please note that we did not receive information for any current retirees in Groups A, E, or H who would qualify for the 90% minimum benefit. If there are any, it could increase the cost impact substantially and a revision to this letter may be required. Please let us know if you are aware of any.

Contribution Impact

The estimated contribution impact of this proposal based on the results from the 2011 valuation and budgeted FY2013 contribution is shown on the following pages. The amounts are rounded to the nearest thousand. Please note numbers may not add due to rounding.

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Base Scenario

Group A

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$0	\$149,000	\$149,000
Normal Cost	\$0	\$6,000	\$6,000
FY2013 Contribution	\$0	\$16,000	\$16,000

Group E

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$1,481,000	\$120,000	\$1,601,000
Normal Cost	\$88,000	\$5,000	\$93,000
FY2013 Contribution	\$188,000	\$13,000	\$201,000

Group H

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$200,000	\$0	\$200,000
Normal Cost	\$8,000	\$0	\$8,000
FY2013 Contribution	\$21,000	\$0	\$21,000

All groups A, E, H

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$1,681,000	\$269,000	\$1,950,000
Normal Cost	\$96,000	\$11,000	\$107,000
FY2013 Contribution	\$209,000	\$29,000	\$238,000

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Scenario 2

Group A

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$0	\$201,000	\$201,000
Normal Cost	\$0	\$7,000	\$7,000
FY2013 Contribution	\$0	\$21,000	\$21,000

Group E

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$1,577,000	\$135,000	\$1,712,000
Normal Cost	\$94,000	\$6,000	\$100,000
FY2013 Contribution	\$200,000	\$15,000	\$215,000

Group H

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$263,000	\$0	\$263,000
Normal Cost	\$10,000	\$0	\$10,000
FY2013 Contribution	\$28,000	\$0	\$28,000

All groups A, E, H

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$1,840,000	\$336,000	\$2,176,000
Normal Cost	\$105,000	\$13,000	\$118,000
FY2013 Contribution	\$228,000	\$36,000	\$264,000

Total Increase from Base Scenario

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$159,000	\$67,000	\$225,000
Normal Cost	\$8,000	\$2,000	\$11,000
FY2013 Contribution	\$19,000	\$7,000	\$26,000

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Scenario 3

Group A

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$0	\$213,000	\$213,000
Normal Cost	\$0	\$8,000	\$8,000
FY2013 Contribution	\$0	\$22,000	\$22,000

Group E

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$1,604,000	\$138,000	\$1,742,000
Normal Cost	\$96,000	\$6,000	\$102,000
FY2013 Contribution	\$204,000	\$15,000	\$219,000

Group H

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$278,000	\$0	\$278,000
Normal Cost	\$11,000	\$0	\$11,000
FY2013 Contribution	\$30,000	\$0	\$30,000

All groups A, E, H

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$1,882,000	\$351,000	\$2,233,000
Normal Cost	\$107,000	\$14,000	\$121,000
FY2013 Contribution	\$233,000	\$37,000	\$271,000

Total Increase from Base Scenario

Increase/(Decrease) in	Union	Non-union	Total
Accrued Liability	\$201,000	\$82,000	\$283,000
Normal Cost	\$11,000	\$3,000	\$14,000
FY2013 Contribution	\$24,000	\$9,000	\$33,000

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Note that the portion of the contribution due to the change in Actuarial Accrued Liability is amortized as a level percentage of assumed payroll over 20 years.

Please also note that the results shown above reflect the impact on the FY2013 contribution. If these changes are adopted, they may first be reflected in the 2012 actuarial valuation report and FY2014 budgeted contribution, or even later (depending on when the changes are adopted and when the County decides to reflect them).

Additional Considerations

With the changes to disability benefits for certain service-connected disablements, it is possible that the frequency of disability claims could change. This could change the impact on County contribution amounts shown in this letter.

Additionally, in the short term, the more generous COLAs available for service retirement benefits for service prior to June 30, 2011, as opposed to disability retirements after June 30, 2011, could result in a decrease to the number of disability claims in the near future.

We did not attempt to quantify the impact of either of the above.

Impacts on any amounts reflecting the most recent GASB 27 exposure draft have not been incorporated into the results in this letter. This would require additional calculations beyond the scope of this letter.

Important Notices

Mercer has prepared this letter exclusively for Montgomery County; Mercer is not responsible for reliance upon this letter by any other party. Subject to this limitation, Montgomery County may direct that this letter be provided to its auditors.

The only purpose of this letter is to provide analyses of the specified changes on annual contribution amounts in order to help the County analyze its options. This letter may not be used for any other purpose; Mercer is not responsible for the consequences of any unauthorized use.

Decisions about benefit changes, granting new benefits, investment policy, funding policy, benefit security and/or benefit-related issues should not be made on the basis of this letter, but only after careful consideration of alternative economic, financial, demographic and societal factors, including financial scenarios that assume future sustained investment losses.

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This letter only represents a snapshot of a Plan's estimated financial condition at a particular point in time; it does not predict the Plan's future financial condition or its ability to pay benefits in the future and does not provide any guarantee of future financial soundness of the Plan. Over time, a plan's total cost will depend on a number of factors, including the amount of benefits the plan pays, the number of people paid benefits, the period of time over which benefits are paid, plan expenses and the amount earned on any assets invested to pay benefits. These amounts and other variables are uncertain and unknowable at the date of the analysis.

Because modeling all aspects of a situation is not possible or practical, we may use summary information, estimates, or simplifications of calculations to facilitate the modeling of future events in an efficient and cost-effective manner. We may also exclude factors or data that are immaterial in our judgment. Use of such simplifying techniques does not, in our judgment, affect the reasonableness of analysis results for the plan.

To prepare this letter, actuarial assumptions, as described herein and in the July 1, 2011 actuarial valuation report, are used in a forward looking financial and demographic model to select a single scenario from a wide range of possibilities; the results based on that single scenario are included in this letter. The future is uncertain and the plan's actual experience will differ from those assumptions; these differences may be significant or material because these results are very sensitive to the assumptions made and, in some cases, to the interaction between the assumptions.

Different assumptions or scenarios within the range of possibilities may also be reasonable and results based on those assumptions would be different. As a result of the uncertainty inherent in a forward looking projection over a very long period of time, no one projection is uniquely "correct" and many alternative projections of the future could also be regarded as reasonable. Two different actuaries could, quite reasonably, arrive at different results based on the same data and different views of the future. Due to the limited scope of Mercer's assignment, Mercer will not perform or present an analysis of the potential range of future possibilities and scenarios when requested. At the County's request, Mercer is available to determine the cost of a range of scenarios.

Actuarial assumptions may also be changed from one valuation to the next because of changes in mandated requirements, plan experience, changes in expectations about the future and other factors. A change in assumptions is not an indication that prior assumptions were unreasonable when made.

The calculation of actuarial liabilities for valuation purposes is based on a current estimate of future benefit payments. The calculation includes a computation of the "present value" of those

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estimated future benefit payments using an assumed discount rate; the higher the discount rate assumption, the lower the estimated liability will be. For purposes of estimating the liabilities (future and accrued) in this letter, the County selected an assumption based on the expected long term rate of return on plan investments. Using a lower discount rate assumption, such as a rate based on long-term bond yields, could substantially increase the estimated present value of future and accrued liabilities, thus increasing the savings estimated in this letter, but also increasing the cost of the remaining benefits.

Because analyses are snapshots in time and are based on estimates and assumptions that are not precise and will differ from actual experience, contribution calculations are inherently imprecise. There is no uniquely "correct" level of contributions for a particular plan year.

Valuations do not affect the ultimate cost of the Plan, only the timing of contributions into the Plan. Plan funding occurs over time. Contributions not made this year, for whatever reason, including errors, remain the responsibility of the Plan sponsor and can be made in later years. If the contribution levels over a period of years are lower or higher than necessary, it is normal and expected practice for adjustments to be made to future contribution levels to take account of this with a view to funding the plan over time.

Data, computer coding, and mathematical errors are possible in the preparation of results involving complex computer programming and thousands of calculations and data inputs. Errors in a valuation discovered after its preparation may be corrected by amendment to this analysis letter.

Assumptions used are based on the last experience study, as adopted by the County and the Board of Investment Trustees. The County is responsible for selecting the plan's funding policy, actuarial valuation methods, asset valuation methods, and assumptions. The policies, methods and assumptions used in this letter are those that have been so prescribed and are described herein. The County is solely responsible for communicating to Mercer any changes required thereto.

To prepare this letter Mercer has used and relied on financial data and participant data supplied by the County and summarized herein. The County is responsible for ensuring that such participant data provides an accurate description of all persons who are participants under the terms of the plan or otherwise entitled to benefits as of July 1, 2011 that is sufficiently comprehensive and accurate for the purposes of this report. Although Mercer has reviewed the data in accordance with Actuarial Standards of Practice No. 23, Mercer has not verified or audited any of the data or information provided.

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Mercer has also used and relied on the plan documents, including amendments, and interpretations of plan provisions, supplied by the County as summarized herein. We have assumed for purposes of this letter that copies of any official plan document including all amendments and collective bargaining agreements as well as any interpretations of any such document have been provided to Mercer along with a written summary of any other substantive commitments. The County is solely responsible for the validity, accuracy and comprehensiveness of this information. If any data or plan provisions supplied are not accurate and complete, the results may differ significantly from the results that would be obtained with accurate and complete information; this may require a later revision of this report. Moreover, plan documents may be susceptible to different interpretations, each of which could be reasonable, and that the different interpretations could lead to different results.

The County should notify Mercer promptly after receipt of this letter if the County disagrees with anything contained in this report or is aware of any information that would affect the results of this report that has not been communicated to Mercer or incorporated therein. This report will be deemed final and acceptable to the County unless the County promptly provides such notice to Mercer.

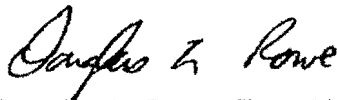
All costs, liabilities, and other factors under the plan were determined in accordance with generally accepted actuarial principles and procedures. Funding calculations reflect the provisions of current statutes and regulations issued hereunder. In our opinion, the actuarial assumptions are reasonable and represent our best estimate of the anticipated experience under the plan.

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Professional Qualifications

We are available to answer any questions on the material contained in the report, or to provide explanations of further details as may be appropriate. The undersigned credentialed actuaries meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained in this report. We are not aware of any direct or material indirect financial interest or relationship, including investments or other services that could create a conflict-of-interest, that would impair the objectivity of our work.

Sincerely,



Douglas L. Rowe, FSA, MAAA, EA
Principal



James M. Baughman, ASA, MAAA, EA
Senior Associate

Copy:
Belinda Fulco, Montgomery County Government

The information contained in this document (including any attachments) is not intended by Mercer to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code that may be imposed on the taxpayer.

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